

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2671 OF 2002

AIR INDIA LTD.)
Air India Building,)
Nariman Point,)
Mumbai 400 021.).. Petitioners

Versus

1. Mr. Anil R. Joshi)
18, Meghalaya Society)
Vazira Naka, Lokmanya)
Tilak Road, Borivli (W))
Mumbai 400 092.)

2. The Presiding Officer)
National Industrial)
Tribunal at Mumbai.).. Respondents

Mr. C.U. Singh a/w J.S. Saluja i/b. M.V. Kini & Co.
for the Petitioners.

Mr. A.R.Joshi, Respondent in person.

CORAM: S.K.SHAH, J.

DATE : 13th October, 2005.

ORAL JUDGMENT ;

1. Heard learned Counsel for the petitioners as well

as the Respondent in person.

2. By this Writ Petition, what is challenged is the order dated 12th August, 2002, passed by the Presiding Officer, National Industrial Tribunal (NIT), Mumbai, on Approval Application No. NTB-91 of 1996 arising out of Reference No. NTB-1 of 1990). By this order, the Application seeking approval of dismissal of Respondent No.1 by the Petitioners was dismissed.

2. The learned Counsel for the Petitioners submits that the said approval was required to be taken under the provisions of Section 33(2)(b) of the Industrial Disputes Act, 1947 as Air India was a party to the said proceeding. He however submits that while deciding the Reference No. NTB-1 of 1990, the NIT Mumbai by its order dated 6.9.2004 has observed in paras 24 to 27 of the Judgment to the effect that Air India could not be a party to the Reference as the Reference that was made by the Central Government was only between Indian Airlines and its employees. It also while passing the Part I Award in the said Reference held that the said award would be binding on Indian Airlines and its employees only and that the Tribunal under the garb of giving Award in the said Reference cannot make any such change in the set up. The Tribunal found that the Reference cannot cover any industrial dispute between Air India and its workmen

as the order of the Central Government is confined to disputes between Indian Airlines and its workmen. The learned Counsel for the Petitioners, therefore, submits that this Petition can be disposed of on the ground that approval as required to be obtained under Section 33 of the Industrial Disputes Act is not necessary at all. He further submits that the order of dismissal could be challenged by the Respondent No.1 by making a separate reference under Section 10(10(a) of the Industrial Disputes Act.

3. With a view to understand this, it is necessary to make reference as to how the matter proceeded. NTB-1 of 1990 was a Reference made by the Central Government setting out certain terms as industrial dispute existed between the Management of Indian Airlines and its workmen in respect of matters specified in the Schedule which are the subject matter of dispute and matters appear to be connected with the dispute or relevant to the dispute. The order of the Central Government mentions that the dispute involving questions of national importance and is also of such nature that the establishment of Indian Airlines situated in more than one state are likely to be interested in or affected by the terms of Reference which included in its fold various demands made by the employees of the Indian Airlines on par with employees of Air India. As such, NIT issued notices not only to

Indian Airlines, but also to Air India. The notices issued to Air India were challenged before this Court by Air India Aircraft Engineers Association for quashing the same, being Writ Petition No.1910 of 1991 and also by Indian Pilots' Guild, being Writ Petition No.2805 of 1991. This Writ Petition came to be dismissed by holding that although Air India was not necessary party, it was certainly proper party. The said decision of the Single Judge was challenged before Division Bench in L.P.A. No.604 of 1991 and the Division Bench rejected the Application.

4. Thus, pending Reference, Air India passed an order of dismissal against Respondent and sought an approval at the NIT. Initially, the Tribunal granted approval. That decision was challenged before this Court and this Court in the Writ petition No.1479 of 1999 filed by the Respondent by order dated 26.7.2001 set aside the said approval and remanded the matter back to the Tribunal for being decided afresh after allowing The evidence to be led by the employer. Thereafter, the Tribunal by its order dated 12.8.2002 rejected the application. It is that order which is assailed in this Writ Petition.

5. The question is whether the approval is necessary under Section 33 of the Industrial Disputes Act now when the NIT itself has held that Air India need not

be a party to the Reference before him as stated above.

6. It is obvious that the approval was necessary in view of the provisions of Section 33(2)(b) of the said Act as Air India was held to be a party to the Reference and the Respondents being the workmen of Air India were concerned in the dispute. The Respondent who was the employee was not a workman concerned in the dispute before the trial Court as the Tribunal had unequivocally held that there was no dispute between Air India and its employees and the dispute that was referred to it by the Central Government, as stated above, was between Indian Airlines and its employees.

7. This being the position, as the matter stands today, no approval is required to be taken by Air India to the order of dismissal passed by them against the Respondent. The Respondent who is in person however contends that approval happened to be taken because Air India was not only held by the Tribunal but also by this Court, to be the concerned party in the Reference and therefore now the position cannot be changed. However, I do not find any merit in the submission made by the Respondent in person.

8. Taking of approval for dismissal was consequent to the provisions of Section 33 of the said Act. The

approval was required because the dispute as contemplated under Section 33 was pending before the National Industrial Tribunal by way of Reference No.1 of 1990. Since the position as it stands now, finally decided by the National Industrial Tribunal itself that the Reference did not include Air India or its employees. The said Reference cannot be said to be concerning the Respondent being the workmen of Air India.

9. Consequently, on this point, the Writ Petition shall have to be allowed and the impugned order passed by the National Industrial Tribunal shall have to be set aside. It is needless to say that the Respondents would be at liberty to make reference under Section 10(10) of the Industrial Disputes Act. The learned Counsel for the petitioners specifically states that if the Respondent makes a request to the Central Government for making a reference, the Petitioners will not raise any objection with regard to the delay or otherwise. It would, therefore, be open for the Respondent to request the Central Government to make a reference with regard to the order of dismissal.

The Writ Petition is disposed of accordingly.

10. The Respondent requests for staying the operation of this order for a period of four weeks. The

operation of this order is stayed for a period of four weeks.

(S.K.SHAH, J.)